

DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: May 4, 2009
POSITION: Neutral, note concerns
SPONSOR: Office of the Attorney General

BILL NUMBER: SB 811
AUTHOR: M. DeSaulnier

BILL SUMMARY: Vehicles: Specially Constructed Vehicles

This bill would close a loophole in current law by requiring the Department of Motor Vehicles to use the calendar year in which a specially constructed (kit-car) vehicle was first registered outside the state as the "model-year" for registration in California. This would then require those vehicles to meet California smog requirements.

FISCAL SUMMARY

The Department of Motor Vehicles estimates costs to be minor and absorbable.

COMMENTS

Finance is neutral because the bill probably will result in less avoidance of smog controls, but notes concerns, because the bill may not entirely close the intended loophole. If the vehicle is falsely presented as a genuine vintage vehicle, DMV personnel likely could not affirmatively establish that it is not vintage without substantial additional work.

Analyst/Principal (0744) J. Gregg	Date	Program Budget Manager Mark Hill	Date
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Department Deputy Director	Date
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Governor's Office:	By:	Date:	Position Approved _____
			Position Disapproved _____

BILL ANALYSIS	Form DF-43 (Rev 03/95 Buff)
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ANALYSIS**A. Programmatic Analysis****Existing law:**

- Provides that a specially constructed vehicle (SPCN) coming from out of state is registered in California with the same information (i.e. model year) that it had in the previous state. Therefore, these SPCNs are not required to go through the process that SPCNs initially registered in California are required to follow.
- Requires an SPCN, upon registration in California, to be inspected by smog inspection facilities authorized to perform "referee" functions for the purposes of determining the vehicle model-year or the engine year used in the vehicle and thus the appropriate emission control application for that model-year. In determining the model year of the first 500 such vehicles each year the vehicle owner may choose whether the model year determination is based on the vehicle or on the engine.
- Allows owners of vehicles that were not registered as specially constructed to re-apply for registration as an SPCN in future years. If those efforts are successful, the vehicle is subjected to the inspection process whereby an authorized referee determines the model year of the vehicle or its engine.

This bill would:

- Require DMV to use the first year in which the vehicle was registered out-of-state as the model year.
- Allow the owner of such a vehicle to apply for a different model-year determination. If such an application is made during a year in which DMV has already used a specific methodology to register 500 SPCNs, the application must be denied and the vehicle will be subject to the emission control and inspection requirements applicable to the same model-year as the calendar year in which the vehicle was originally registered outside California.
- Specify that a denial of the application does not preclude the vehicle owner from applying for a different model-year determination in a subsequent calendar year.
- Require DMV, if it is unable to establish the year in which the vehicle was originally registered, to assign the same model-year as the calendar year in which the application for registration was submitted, and allows DMV to establish by regulation the procedures for determining the original year of registration.

Discussion: Existing law requires the owners of out-of-state vehicles being re-registered in California to pay a sales and use tax and to obtain a smog certificate of compliance. DMV grants "full faith and credit" to other states' certificates of title and uses the information on those documents to register the vehicles in this state.

Existing law also authorizes DMV to register up to 500 SPCNs per year, determining their model-year by comparing the vehicles to those that they most closely resemble. In order to determine the appropriate model year for emission control standards purposes, they must be inspected by smog inspection facilities authorized to perform "referee" functions. In determining the model year of the

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vehicle it is the owners option as to whether the referee compares the vehicle or the engine to those of the era it most closely resembles. Since most SPCNs are designed to look like classic cars, this provision effectively exempts them from smog requirements.

Once 500 such vehicles have been registered in a given calendar year, DMV requires a smog inspection prior to registration. In this instance a more accurate determination of the engine type is likely and more stringent smog requirements may apply.

According to the bill's sponsor, the California Office of the Attorney General (AG), several states have registration laws that allow an SPCN to be assigned a certificate of title bearing the same model year designation as the vehicle it most closely resembles. A California resident who built in 2008 a SPCN designed to resemble a 1965 vehicle can first register his or her vehicle in another state, be assigned the 1965 model year, and then re-register the vehicle in California as a 1965 vehicle, allowing the vehicle to avoid smog inspection requirements.

The SPCN industry is aware of this loophole and the AG's office has seen a rise in California residents who are purchasing these vehicles out-of-state and returning them to California to avoid emission requirements. Based on the AG's office's prior investigations, it is estimated that between 3,000 and 5,000 SPCNs will be brought into California every year that will not be required to comply with California's vehicle emission requirements. Additionally, as long as this loophole exists, it is believed that the California-based kit car industry will suffer as people seeking to avoid California emissions standards will simply stop purchasing vehicles within the state and instead purchase and take delivery of SPCNs out-of-state.

By using the first year of registration out-of-state as the model year, this bill will close this loophole. However, if the owner falsely presents the SPCN as a genuine vintage vehicle, DMV personnel may not be able to refute the assertion, thereby negating the results of this bill.

The state is required to recognize a currently valid certificate of title that describes the vehicle. Article IV, Section 1 of the US Constitution requires that each state grant full faith and credit to the public acts, records and judicial proceeding of every other state. This bill would attempt to circumvent this federal Constitutional obligation by not fully acknowledging vehicle registration documents from other states for SPCNs.

States also are prohibited from passing laws that would negatively impact the interstate commerce of another state. On the other hand, other states' laws should not prevent California from complying with federal air quality standards nor should they prevent California from prosecuting fraud.

According to the State and Consumer Services Agency, not every state defines SPCN as California does and not every state notes on the registration that the vehicle is an SPCN. This complicates the ability of DMV to determine which out of state vehicles are SPCNs. If DMV can only distinguish the SPCNs from states that designate SPCNs on their registrations, then that would unfairly impact the residents of those states coming to California compared to the residents of states without the designation coming to California. For example, an SPCN owner of Vehicle X from State A (with the SPCN designation on the registration) would be required to meet stringent emissions requirements for his or her SPCN, while an SPCN owner of Vehicle X from State B (without the SPCN designation) would not have to meet any emissions standards and would receive a similar registration in California to that of State B. This would unfairly impact the ability of the SPCN owner from State A to resettle in California, which is against federal law as well. DMV is working on how it will determine which vehicles coming into California from another state are SPCNs.

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B. Fiscal Analysis

The Department of Motor Vehicles estimates costs to be minor and absorbable.

		SO	(Fiscal Impact by Fiscal Year)						
Code/Department	LA	(Dollars in Thousands)							
Agency or Revenue	CO	PROP							Fund
Type	RV	98	FC	2009-2010	FC	2010-2011	FC	2011-2012	Code
2740/DMV	SO	No	----- Minor Fiscal Impact -----						0044
<u>Fund Code</u>	<u>Title</u>								
0044	Motor Vehicle Account, STF								